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Supreme Court of the United States

October Term, 1973
No. 73-327

STATE OF OHIO, *ex rel.*
RONNIE WOODBURY AND THOMAS WOODBURY,
Petitioners,

vs.

DANIEL T. SPITLER, Prosecuting Attorney
of Wood County, Ohio,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF OHIO

BRIEF OF PETITIONERS IN REPLY TO BRIEF OF RESPONDENT IN OPPOSITION

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FACTS

In reading the Statement of Facts as contained in the Petitioners' Petition for Writ of Certiorari and Respondent's Brief in Opposition, it appears that the parties are at least in agreement as to the following: (1) a plea bargain agreement was entered into by the Petitioners, Respondent and trial Judge, Floyd A. Coller, wherein the Petitioners would plead guilty to one count of multi-count indictments and would cooperate with the Respondent and trial Judge thereafter, (2) that the Respondent and trial Judge were to dismiss the other counts in the multi-count indictments, after the Petitioners had pled guilty, (3) that the Petitioners fulfilled their part of the agree-

ment by entering a plea of guilty to one count of the multi-count indictments and thereafter cooperated with the Respondent and trial Judge, and (4) that the trial Judge and Respondent have not fulfilled their part of the agreement to date.

In addition to the foregoing, the Respondent has set forth new facts in his Statement of Facts set forth in his Brief in Opposition, to the effect that the trial Judge withdrew the Petitioners' guilty pleas on his own Motion and because of this action by the trial Judge, the Respondent maintains that neither he nor the trial Judge are now obligated to keep or fulfill their agreement with the Petitioners. In this respect, the Petitioners would only point out that it should be noted that the withdrawal of the guilty pleas was done over the objection of the Petitioners and upon the Respondent and trial Judge's own Motion, and that the proceedings evidenced by Exhibit B as contained in Respondent's Brief in Opposition, do not tell the true story of the meaning of that hearing, since the full circumstances and surroundings in which that hearing was held have not been made known to this Court. In this respect, such hearing was held at 3:16 P.M. on February 1, 1971, shortly after a hearing had been held on that same date in a companion case of a Co-Defendant, not a party herein, wherein that Co-Defendant and his counsel had accused the Respondent and trial Judge of bribing the Petitioners herein by entering into the aforestated plea bargain agreement. Thus, when such hearing is viewed in the totality of the circumstances surrounding same, it was more than evident that the hearing upon the Motion of the Respondent and trial Judge was done for their benefit in view of the bribery charges and was not done with any thoughtfulness towards the Petitioners.

REASONS FOR GRANTING WRIT

In response to the Brief in Opposition filed by the Respondent herein, and upon the additional facts presented by the Respondent, the Court is presented with a situation wherein the Respondent and trial Judge have attempted to abrogate their plea bargain agreement with the Petitioners, after the Petitioners have fully performed, by destroying the consideration given by the Petitioners. However, Petitioners maintain that the agreement cannot be abrogated by the destruction of the consideration which they have given by the Respondent and trial Judge, and that the Petitioners having fully performed, the Respondent and trial Judge must likewise perform and keep their part of the agreement.

It is indeed unfortunate that the Respondent and trial Judge were accused of bribery in the companion case by the Co-Defendant and attorney in that case, for undoubtedly, if that had not occurred, this matter would not now be before this Court, as the Petitioners have no doubt that the Respondent and trial Judge would have performed their part of the agreement. Furthermore, it is unfortunate that the Respondent and trial Judge were not of such strength of character, particularly in a situation where they were in no way guilty nor should they have even been suspected of bribery, to refuse to be intimidated by the Co-Defendant and his counsel in the companion case. However, this has not been the case, and the intimidation of the Respondent and trial Judge has resulted in the unfortunate situation wherein the Petitioners herein are being denied their due process of law. Ironically, and curiously enough, the Co-Defendant and his attorney in the companion case have not been asked to

answer for such accusations, not even having been charged in contempt of Court.

Thus, in regard to *Santobello v. New York*, 404 U.S. 257, 30 L. Ed. 2d 427, 92 S. Ct. 495 (1971) wherein this Court was presented with a fact situation where the Respondent (Prosecutor) had *inadvertently* failed to keep its part of the plea bargain agreement therein, we have a much stronger factual situation here, in that the Respondent and trial Judge have *intentionally* and *knowingly* attempted to abrogate the plea bargain agreement which they entered into with the Petitioners. As was held by this Court in the *Santobello* case, a plea bargain agreement entered into by the parties in a criminal case, must be performed by those prosecuting, where a Defendant has performed his part of that agreement, and this is all that the Petitioners seek to accomplish here.

The Petitioners would not argue with the Respondent or trial Judge in that if the Petitioners themselves had requested that their guilty pleas be set aside, that they would now be estopped from requesting the Respondent and trial Judge to perform the plea bargain agreement. However, there is a definite distinction between that situation and the situation which has arisen here, in that the consideration to be given and which was given by the Petitioners was not destroyed by them or by their own actions, but was destroyed by the Respondent and trial Judge upon their own Motion. Petitioners submit that this is a significant distinction, in that if the Respondent and trial Judge are allowed to act in this manner, then no Defendant can be assured that the Prosecutor and trial Judge will perform their part of the bargain once he has performed his part of the bargain, since the Defendant will know that the Prosecutor and trial Judge may, if they so desire and for their own personal reasons,

destroy the consideration given by the Defendant, and thus abrogate the plea bargain agreement. Petitioners submit that without question, where they have performed their part of the agreement, including submitting themselves to lie detector tests, giving sworn statements before a Court Reporter, and appearing at Court to testify, all done on behalf of the Respondent (Prosecutor), that they cannot now be returned to their original position, and that to attempt to do so can only result in the denial of their due process of law.

Respondent has submitted that he is willing to go forward with the plea bargain agreement provided the Petitioners enter a new plea of guilty, which the Petitioners submit in essence is nothing more than a request by the Respondent to have the Petitioners enter into a new plea bargain agreement. Obviously, where the Petitioners have already given sworn statements, submitted themselves to lie detector tests and appeared at Court to testify, they cannot be placed in the same bargaining position as they were in at the time the original plea bargain agreement was entered into by the parties. Thus, again, they would be denied their due process of law if required to enter into a new plea bargain agreement.

However, noting that this matter has gone on now for over three years, the Petitioners would enter into a new plea bargain agreement, if there was an assurance on the part of the Respondent, that they, in fact, would receive the same agreement, treatment and disposition of their case that James Falls received, he being the other Defendant who entered into the same plea bargain agreement as the Petitioners did and as is the subject matter herein. However, the Respondent has continuously suggested to the Petitioners, that although he would recommend the dismissal of the remaining charges of the multi-

count indictments, if the Petitioners should plead guilty to one count, he has also consistently stated that he would not recommend probation as he did for James Falls, nor did he have any assurance that the trial Judge would allow him to dismiss the remaining counts. Therefore, although the three Defendants (two Petitioners herein and James Falls) all entered into the same plea bargain agreement, and although the Respondent has performed in such a manner as to conclude the agreement on the part of one of such three Defendants (James Falls), the Respondent has not offered to conclude the same agreement with the Petitioners in the same manner.

Petitioners at all times herein and before the other Courts which have heard this matter, have consistently attempted to obtain an Order which would place them and the Respondent and trial Judge in the same position which they would have been in if the Respondent and trial Judge had performed their part of the agreement. In this respect, the Petitioners entered a plea of guilty pursuant to the plea bargain agreement on January 4, 1971, and were remanded to the County Jail to await sentencing and dismissal of the other charges. Despite the fact that the Petitioners remained in jail for a period of four weeks, which was more than sufficient time for the Respondent to dismiss the remaining charges and for the trial Judge to conclude sentencing, the Respondent and trial Judge did not perform in this respect. Thus, if the Respondent and trial Judge had timely performed their part of the plea bargain agreement, the Petitioners would have been sentenced and the remaining counts would have been dismissed prior to such time as the Respondent and trial Judge were accused of bribery on February 1, 1971. Consequently, with the withdrawal of the guilty pleas of the Petitioners on the Motion of the Re-

spondent and trial Judge, the Petitioners would have been in the position where they would be faced with one count pending against them, which is exactly the same position they would be in if this Court should find that the Respondent and trial Judge are ordered to perform their part of the plea bargain agreement by dismissing the remaining counts of the indictments.

It should further be noted that in the original Petition for a Writ of Mandamus filed in the Court of Appeals for Wood County, Ohio, the Petitioners moved the Court to make the trial Judge a party thereto, which Motion was denied, thus precluding the Petitioners from a full hearing upon the merits to determine whether or not there was, in fact, a plea bargain agreement and, if so, who the parties were to that agreement.

Petitioners, for the foregoing reasons, respectfully submit to the Court that a Writ of Certiorari should issue herein so that the Petitioners may be granted due process of law and so that the integrity of the plea bargain agreement system of disposing of cases can be preserved.

Respectfully submitted,

/s/ M. SHAD HANNA
Attorney for Petitioners